MOTION FILED

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No. 00-1329 (4)

IN THE

Supreme Court of the United States

CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA; CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA, CARPENTERS VACATION AND HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA,
(Additional Petitioners Listed on Inside Cover),
Petitioners,

v.

TRIG ELECTRIC CONSTRUCTION CO., A WASHINGTON CORPORATION; LYDIG CONSTRUCTION, INC.; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; AND DEPARTMENT OF GENERAL ADMINISTRATION,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

MOTION OF MULTI-EMPLOYER TRUST FUNDS TO FILE BRIEF AS *AMICI CURIAE*; AND BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE PETITIONERS

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MOTION OF MULTI-EMPLOYER TRUST FUNDS FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Various Trust Funds representing certain trade workers in California ("the Trust Funds)" hereby move the Court pursuant to Supreme Court rule 37.2 for leave to file the accompanying brief as *amici curiae* in support of the Petition for Writ of Certiorari filed on February 12, 2001 in U.S.S.C. No. 00-1329.

The *Amici Curiae* are the following Trust Funds ("Trust Funds"); Carpenters Health and Welfare Trust Fund for California; Carpenters Pension Trust Fund for Northern California, Carpenters Vacation and Holiday Trust Fund for Northern California, Carpenters Training Trust Fund for Northern California, Carpenters Annuity Trust Fund for Northern California, Laborers Health and Welfare Trust Fund for Northern California, Laborers Vacation-Holiday Trust Fund for Northern California, Laborers Pension Trust Fund for Northern California, Laborers Training and Retraining Trust Fund for Northern California, Cement Masons Health and Welfare Trust Fund for Northern California, Cement Masons Pension Trust Fund for Northern California, Cement Masons Vacation Trust Fund for Northern California, Cement Masons Apprenticeship and Training Trust Fund for Northern California, Operating Engineers Health and Welfare Trust Fund for Northern California, Pension Trust Fund for Operating Engineers, Pensioned Operating Engineers Health and Welfare Fund, Operating Engineers and Participating Employers Pre-Apprenticeship, Apprentice and Journeymen Affirmative Action Training Fund, in support of this motion, the Trust Funds state the following:

1. This motion is necessitated by the failure of Lydig Construction, Inc., Fidelity and Deposit Company of Maryland, and Department of General Administration, Respondents, upon request, to give written consent to the filing of a brief by the *amici* applicants herein. The consent of Petitioner, International Brotherhood of Electrical Workers, Local Union No. 46, and of Respondent Trig Electric has been obtained.

2. The Trust Funds are multi-employer trust funds established pursuant to the provision of Labor Management Relations Act of 1974, as amended, Section 302(c), 29 U.S.C. 186(c). All of the Trust Funds are employee benefit funds within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1001, *et seq.*, and are subject to federal regulation pursuant to the provisions of ERISA.

3. Each Trust Fund was established by a collective bargaining agreement. Each Trust Fund administers benefit plans ("Plan" or "Plans") that are funded with monies that otherwise would be paid to employees as wages or salaries. These Plans are a result of collective bargaining between employers and unions.

4. The Trust Funds seek leave to file the attached brief in order to make this Court aware of the serious legal, fiscal, and public policy implications of the Washington State Supreme Court's ruling in *International Brotherhood of Electrical Workers, Local Union No. 46 v. Trig Electric Construction Co.; Lydig Construction, Inc.; Fidelity and Deposit Company of Maryland and Department of General Administration* No. 98-2-26652-0 SEA, 43 P.2d 622 (1999). The Washington State Supreme Court's holding that state third-party lien statutes fall within ERISA's preemptive reach has a potentially devastating effect upon the welfare of millions of

workers. The decision thwarts the intent of Congress to protect beneficiaries and compromises the Trustee's fiduciary duty to collect benefits on behalf of its beneficiaries.

5. The financial integrity of the Plans is also in jeopardy if it is found that ERISA prohibits the Trust Funds from collecting delinquent contributions through third-party lien statutes. Unscrupulous employers will have a loophole to shirk their obligations while participants and beneficiaries will lose hard-earned benefits, which are equivalent to a loss of wages.

6. Because of the split among state courts and federal circuits regarding this issue, only a clear decision by this Court will resolve this problem.

7. These *amici* are in a unique position to advise the Court with regard to the implications of the *Trig Electric* decision because of their familiarity with the structure, administration, and purposes of multi-employer trust funds as well as their reliance upon state third-party lien laws to collect delinquent contributions.

WHEREFORE, the Trust Funds respectfully request that they be granted leave to file the accompanying brief as *amici curiae*.

Respectfully submitted,

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BRIEF OF THE MULTI-EMPLOYER TRUST FUNDS AS *AMICI CURIAE* IN SUPPORT OF THE PETITION

NOW COME the *Amici Curiae*,[1] Trust Funds representing certain Trade Workers in California who submit this brief in support of the Petition for A Writ of Certiorari in No. 00-1329.

The *Amici Curiae* are the following Trust Funds: Carpenters Health and Welfare Trust Fund for California; Carpenters Pension Trust Fund for Northern California, Carpenters Vacation and Holiday Trust Fund for Northern California, Carpenters Training Trust Fund for Northern California, Carpenters Annuity Trust Fund for Northern California, Laborers Health and Welfare Trust Fund for Northern California, Laborers Vacation-Holiday Trust Fund for Northern California, Laborers Pension Trust Fund for Northern California, Laborers Training and Retraining Trust Fund for Northern California, Cement Masons Health and Welfare Trust Fund for Northern California, Cement Masons Pension Trust Fund for Northern California, Cement Masons Vacation Trust Fund for Northern California, Cement Masons Apprenticeship and Training Trust Fund for Northern California, Operating Engineers Health and Welfare Trust Fund for Northern California, Pension Trust Fund for Operating Engineers, Pensioned Operating Engineers Health and Welfare Fund, Operating Engineers and Participating Employers Pre-Apprenticeship, Apprentice and Journeymen Affirmative Action Training Fund.

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[1] No counsel for any party to this dispute authorized this brief in whole or in part and no person or entity, other than *amici curiae* and their members, made a monetary contribution to the preparation or submission of this brief. Petitioner has consented to the filing of this brief.

INTEREST OF THE *AMICI CURIAE*

The Trust Funds are multi-employer trust funds established pursuant to the provisions of the Labor Management Relations Act of 1974 ("LMRA"), as amended, Section 302 (c), 29 U.S.C. § 186 (c). All of the Trust Funds are employee benefit funds within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et. seq.*, and are subject to federal regulation pursuant to the provisions of ERISA and the LMRA. Each of these Trust Funds owes the fiduciary duty to collect delinquent trust fund contributions and to that end, where applicable, relies on the use of California's mechanics lien laws to facilitate collection. Wholesale ERISA preemption of state lien laws, as suggested by the *Trig Electric* decision, would seriously jeopardize the Trust Funds' ability to collect delinquent contributions and, in turn, hamper their ability to fulfill their statutorily-mandated fiduciary duties.

The Trust Funds are in a unique position to advise the court with regard to the implications of the *Trig Electric* decision because of their familiarity with the structure, administration, and purposes of multi-employer trust funds and the practical difficulties encountered in the collection process.

SUMMARY OF ARGUMENT

This Petition presents an issue of critical nationwide importance that should be resolved by this Court. This case affects the means by which a vast number of workers throughout the country receive their medical, vacation, pension and other benefits. At issue here is the ability of multi-employer trust funds, such as the *Amici*, to use routine state-created mechanisms for the collection of monies owed by employers for those benefits. Congress's objectives in enacting ERISA and its preemption clause were to affirm the paramount duty of trust funds to protect and secure these benefits for employees. Yet, the Washington Supreme

Court's decision in *Trig Electric* defies these Congressional purposes by its holding that the Washington lien statute regulates how ERISA plans are funded and is therefore not "outside the preemptive scope of ERISA." This decision is plainly wrong as a matter of law, and violates the principles of federalism underlying this Court's preemption jurisprudence. Allowed to proliferate, the reasoning of *Trig Electric* would result in the preemption of an enormous array of state laws that are of assistance to ERISA-governed plans in the collection of monies owed to them. Review should be granted to prevent that disaster. This case affects Trust Funds throughout the United States, including California, that utilize state mechanics lien laws to collect delinquent contributions. In light of the conflict between the decision below and those of other courts as well as those of this Court, the writ should issue.

REASONS FOR GRANTING THE WRIT

I. The Washington Supreme Court's Application of ERISA preemption to State Lien Laws would Impair the Protection of Employee Benefits by Depriving the Trust Funds of Important Collection Methods.

"Multi-employer employee benefit plans are something of the darlings of Congress." *Benson v. Brower's Moving & Storage, Inc.*, 726 F. Supp. 31, 34 (E.D. N.Y. 1989). ERISA's essential purpose is to protect the rights of employees, not the rights of employers. ERISA Section 2(b), 29 U.S.C. § 1001(b). The fiduciary mandate is clear: "trustees have an obligation to enforce the terms of the collective bargaining agreement regarding employee fund contributions against the employer for the sole benefit of the beneficiaries of the fund." *NLRB v. Amax Coal Co., A Div. of Amax, Inc.*, 453 U.S. 322, 336-337 (1981)) (emphasis in original).

ERISA's preemption provision, 29 U.S.C. § 1144(a), was not intended to limit the means by which trust funds could protect these interests. Rather, the intent of ERISA preemption was to simplify the "administrative procedures" to avoid "the burden that would be imposed by a patchwork scheme of regulation." *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 11-12 (1987). The fact that Congress favors multi-employer employee benefit plans is nothing new. For example, the anti-inurement provision of ERISA, 29 U.S.C. § 1103(c)(1), has the "intentionally one-sided purpose of protecting employees and protecting the financial integrity of pension plans." *Kwatcher v. Massachusetts Service Employees Pension Fund*, 879 F.2d 957, 961 (1st Cir. 1989).

Under the *Trig Electric* decision, ERISA preemption, meant as an aid to the employee benefit plan, is transformed from a benefit to a curse. Still, the Washington Supreme Court attempted to justify its conclusion by claiming that lien laws "interfere" with the "administration of ERISA plans." This cannot be so when ERISA plans, such as those of the Trust Funds, depend on the use of lien statutes, and other state law collection mechanisms, to collect delinquencies. No "interference" was detailed by the *Trig Electric* court and none in fact exists.

Moreover, nowhere in *Trig Electric* did the Washington Supreme Court address how its conclusion could be squared with the statements made by the Congressional Committee when ERISA Section 515 was enacted: "The Committee amendment does not change any other type of remedy permitted under State or Federal law with respect to delinquent multi-employer plan contributions." H.R. Rep. No. 869, 96th Cong., 2d Sess, reprinted in 1980 U.S.C.C.A.N. 2993, 3038.

Not only did the *Trig Electric* court disregard this Congressional intent, it departed from the recent instructions of this Court in *New York State Conference of Blue Cross &*

Blue Shield Plans v. Travelers Inc. Co., 514 U.S. 645 (1995) and *California Division of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316 (1997). *Travelers* and *Dillingham* explain exactly how a court is to conduct the preemption analysis—with the "starting presumption" that ERISA does not intend to supplant state law. *Travelers*, 514 U.S. at 653, *Dillingham*, 519 U.S. at 330. The *Trig Electric* court neither started nor ended with this presumption.

In short, the *Trig Electric* decision was rendered in disregard of the Congressional purpose of ERISA and ERISA's preemption clause, and the Petition for Certiorari should be granted.

II. Review Should Be Granted To Prevent Use Of ERISA To Undermine ERISA-Favored Plans And Collectively Bargained Benefits.

Employee fringe benefits are a negotiated part of the collective bargaining agreements supporting multi-employer benefit plans such as those of the Trust Funds here. They are part of the employees' total "wage packet." During negotiations, the employers and unions make trade-offs respecting where the dollars will go, allocating them between hourly pay and contributions to various employee benefit funds. These contributions are not only for retirement benefits; they also fund many other pressing non-wage needs of employees, including health and welfare, vacation, apprenticeship and training. Yet, despite the importance of these benefits, the trust fund contribution process is self-reporting, *i.e.*, on a monthly basis the employer sends in a report of the hours worked for each employee and a check for the fringe benefit contributions owed. Unlike "wages", contributions are held by the employer until the monthly due date. The employer receives the bonus of "floating" the contribution sums for the additional time. But it should never be forgotten that while this money is paid after 'wages" and bypasses the employees' pockets, it is money earned by and

held for the benefit of the employees. Thus, when an employer refuses to pay employee fringe benefit contributions it commits nothing short of thievery of sums held in trust to provide benefits. Unintentional non-payment of contributions poses an equal threat to benefits. In any case, the Trust Funds' fiduciaries retain their duty to collect the money to provide promised benefits.

The *Trig Electric* decision drastically limits a trust fund's ability to rectify thievery and other non-payment of contributions. It would sanction only collection actions and collection methods directly authorized by ERISA Section 502, 29 U.S.C. § 1132. Under the logic of *Trig Electric*, any time a trust fund utilizes a "mechanism" of state law to collect contributions the "mechanism" would "regulate how ERISA plans are funded." A trust fund in possession of a mortgage given for delinquent contributions would "regulate how ERISA plans are funded." A trust fund in possession of a mortgage given for delinquent contributions would not be able to use state law to foreclosure on the property. This is clearly the kind of faulty reasoning with regard to the "relate to" clause which the *Travelers* court cautioned against.

> If 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for 'really, universally, relations stop nowhere.' *Travelers*, 514 U.S. at 655.

The logic of *Trig Electric* would deprive the Trust Funds of use of mechanics liens, payment bonds and related remedies under the laws of every state. For example, in the California construction industry mechanics liens may be used to collect from the property owner monies owed for wages or materials that were supplied to a construction project. Calif. Civil Code § 3110 *et seq*. Stop notice procedures provide for recovery of such monies from lenders, developers, public entities and

others holding construction funds. Calif. Civil Code §§ 3083, 3103. Wages and materials claims can also be recovered from payment bonds, *id* at § 3096 and bonds issued for release of liens and stop notices. *Id.* at §§ 3143, 3196.

These remedies, necessary to obtain monies from third parties in the construction industry, would be denied uniquely where employee benefit contributions were at issue, under the approach of the Washington Supreme Court.

This flawed approach, by forbidding ERISA-favored interests from using construction remedies available to all others, turns ERISA preemption on its head. Rather than favoring collection of benefit contributions, *Trig Electric* would make their collection impossible in the frequent cases where the contributing construction employer is dissolved, insolvent, or cannot be found. It would also make collection less expeditious in all cases, by necessitating litigation where funds or lien rights are not attached. Congress intended the opposite result, in which payment of contributions would be required and collection facilitated.

The practical effect of limiting the trust funds to those means of collection mentioned expressly provided in ERISA § 502 is that there will be fewer and fewer recoveries of delinquent contributions. This will lead inexorably to weakening of the benefit plans, which depend upon strong collection practices. If *Trig Electric* stands and its erroneous principle is applied in other jurisdictions, the benefits promised under collectively bargained ERISA plans will be placed at risk. Loss of benefits and inferior benefits will result. Who will end up carrying the residual cost of the underinsured, the cost of the retired but destitute? Instead of promoting independence and self-reliance for the American worker, the law will provide disincentives for careful planning and foresight. Social welfare programs will be over-burdened. The only beneficiary of this changed system will be certain unscrupulous employers, to whom the *Trig Electric*

decision is a windfall. Under *Trig Electric* a delinquent contractor will be able to insulate its general contractor from liability under state lien laws and use this loophole to negotiate an advantage in its own subcontract. Only the participant employees lose.

In addition, limiting the methods by which ERISA employee benefit plans can collect delinquent fringe benefits not only discourages unionization in the workplace, abrogating the freedom to choose or not choose union representation codified in the National Labor Relations Act, 29 U.S.C. Section 151, *et seq.*, but blatantly discriminates against the union worker. As observed by the Hawaii Supreme Court in *Laborers' Trust Fund v. Muni Prince Hotel*, 81 Haw. 487, 499 (1996), such an "application of ERISA preemption inequitably distinguishes between two groups of persons" and is contrary to Congressional intent in enacting ERISA. The *Trig Electric's* flawed interpretation of the "relate to" clause effectively and improperly regulates ERISA plans to the status of "second-class creditors." [2] This broad and wrong ruling should be reviewed now.

In sum, ERISA preemption was meant to help multi-employer trust funds meet their duties to administer the plans for the sole and exclusive benefit of the employees, their families and dependents. The *Trig Electric* decision negates this purpose and commits "grave violence," *Travelers*, *supra*, 519 U.S. at 332, to the presumption against preemption. The Petition should be granted to ensure that the very essence of ERISA is not swept away by a distorted view on how state law "regulates" ERISA and by a blind-eye to Congress's repeatedly stated objectives.

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[2] Sackman, Lien On: The Story of the Elimination and Return of Mechanic Lien, Stop Notice and Bond Remedies for Collection of Contributions to Employee Benefit Funds, 20 Berkeley Journal of Employment and Labor Law 254, 282 (1999).

CONCLUSION

For the reasons set forth herein, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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